

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Blue Spike, LLC,

Plaintiff,

v.

Audible Magic Corporation,

Defendant.

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Case No. 6:15-cv-584-RWS-CMC

Jury Trial Demanded

**DECLARATION OF RANDALL T. GARTEISER IN SUPPORT OF
BLUE SPIKE, LLC'S OPPOSITION TO AUDIBLE MAGIC'S MOTIONS IN
LIMINE**

I, Randall T. Garteiser, declare as follows:

1. I am a partner in the law firm, Garteiser Honea, PLLC. We represent Plaintiff Blue Spike, LLC ("Blue Spike") in this lawsuit and counterclaim defendants Blue Spike, Mr. Scott Moskowitz and Blue Spike, Inc. I have personal knowledge of the information contained in this declaration and can testify to the truth of these statements.

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the Expert Report of Yannis Papkonstantinou, PhD, prepared in rebuttal to Audible Magic's invalidity report. **[This document is marked confidential and will be filed under seal subject to the parties meet and confer to later filing a redacted version without an order from the Court.]**

3. Attached hereto as **Exhibit B** is a true and correct copy of an email exchanged dated May 11, 1999, between Mike Berry of Blue Spike and Stephan M. Sprenger. **[Blue Spike labeled this document confidential but is now waiving that designation to allow it to be filed publicly].**

4. Attached hereto as Exhibit C is a true and correct copy of deposition excerpts from the deposition of Mike Berry taken on February 10, 2015. **[This document is marked confidential and will be filed under seal subject to the parties meet and confer to later filing a redacted version without an order from the Court.]**

5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the deposition of Scott Moskowitz dated January 16, 2015. **[This document is marked confidential and will be filed under seal subject to the parties meet and confer to later filing a redacted version without an order from the Court.]**

6. Attached hereto as Exhibit E is a true and correct copy of excerpts from the deposition of Scott Moskowitz dated January 16, 2015. **[This document is marked confidential and will be filed under seal subject to the parties meet and confer to later filing a redacted version without an order from the Court.]**

7. Attached hereto as Exhibit F is a Defendant's Trial Exhibit 195 and it is also listed again as Exhibit DTX 220. It bears Blue Spike production number BLU0445056 and was marked for identification during the deposition of Scott Moskowitz as Ex. 33 on January 16, 2015. **[This document contains sensitive, nonpublic financial information. It is confidential and will be filed under seal subject to the protective order in this case.]**

8. Attached hereto as Exhibit G is a a true and correct copy of Defendant's Trial Exhibit 218, a document bearing Blue Spike production numbers BLU445047-BLU0445055. Audible Magic questioned Mr. Moskowitz about this document and labeled it during the deposition as Exhibit 31. **[This document contains sensitive,**

nonpublic financial information. It is confidential and will be filed under seal subject to the protective order in this case.]

9. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from the Expert Report of Yannis Papkonstantinou, PhD, prepared in rebuttal to Audible Magic's invalidity report. **[This document is marked confidential and will be filed under seal subject to the parties meet and confer to later filing a redacted version without an order from the Court.]**

I declare, on June 23, 2016, in Smith County, Texas and under penalty of perjury under the laws of the United States and Texas, that the statements made in this declaration are true and correct.

/s/ Randall T. Garteiser
Randall T. Garteiser